

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NEVADA,

and

THE OFFICE OF THE STATE
CONTROLLER,

Defendants.

Civil No. 3:09-cv-00314-LRH-WGC

SETTLEMENT AGREEMENT

This matter is before the Court for entry of this Settlement Agreement ("Agreement") by consent of all parties to effectuate a final compromise and settlement of all claims raised in the United States' Complaint. After review and consideration, the Court believes that entry of this Agreement is in the interest of justice.

1. Plaintiff United States of America commenced this action in the United States District Court for the District of Nevada, alleging that Defendants State of Nevada and the Office of the State Controller (collectively, "Nevada") violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* ("USERRA") by failing to promptly reemploy Arthur F. Ingram, III ("Ingram") following his service with the U.S. Army and by discriminating against him for engaging in protected conduct when they withdrew a job offer and terminated his employment.

2. As a result of settlement discussions, the United States and the Nevada have agreed that this action should be settled by entry of this Agreement. It is the intent of the parties that this Agreement be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this case, and any and all claims now or hereinafter of any

1 nature whatsoever either known or unknown that the United States or Ingram may have against
2 Nevada, its officers or employees arising out of this lawsuit, and adequately compensates Ingram
3 for those claims.

4 **STIPULATED FACTS**

5 3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United
6 States District Court for the District of Nevada over the subject matter of this action and of the
7 parties to this case for the purpose of entering this Agreement and, if necessary, enforcing this
8 Agreement.

9 4. Venue is proper in this district for purposes of this Agreement and any
10 proceedings related to this Agreement. Nevada agrees that all statutory conditions precedent to
11 the institution of this lawsuit have been fulfilled.

12 **FINDINGS**

13 5. Having examined the terms and provisions of the Agreement, the Court finds the
14 following:

- 15 a. The Court has jurisdiction over the subject matter of this action and the
16 parties to this action.
- 17 b. The terms and provisions of this Agreement are lawful, reasonable, fair
18 and just. The rights of Ingram, Nevada, and the United States are
19 protected adequately by this Agreement.
- 20 c. This Agreement conforms with the Federal Rules of Civil Procedure and
21 USERRA, and is not in derogation of the rights and privileges of any
22 person.
- 23 d. The entry of this Agreement will further the objectives of USERRA, and
24 will be in the best interests of the parties.

25 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
26 FOLLOWS:

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NON-ADMISSION

6. This Agreement, being entered with the consent of the United States and Nevada, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by Nevada of any violations of USERRA, or any other law, rule, or regulation dealing with or in connection with equal employment opportunities.

NON-RETALIATION

7. Nevada shall not take any action against any person, including but not limited to Ingram, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL RELIEF

8. Without admitting the allegations of the United States, and in settlement of the United States' claims for relief for Ingram who, by his signature to the release attached as Appendix A accepts the relief to be given him pursuant to this Agreement, Nevada has agreed to provide remedial relief to Ingram.

9. Within fifteen (15) business days from the date of approval of any payment or funding made pursuant to this Agreement by the State of Nevada Board of Examiners, anticipated to be at a July 10, 2012 meeting, Nevada shall pay Ingram a total monetary award of two hundred sixty-two thousand dollars (\$262,000.00), all of which shall be attributed to back wages. Nevada shall only withhold all appropriate federal income tax. Pursuant to Section 218 of the Social Security Act, Nevada state employees are not subject to Social Security withholdings. On or before the date it is required by law to do so, Nevada shall issue to Ingram the appropriate Internal Revenue Service tax forms reflecting the amounts paid to Ingram as Nevada back wages and the amounts withheld by Nevada.

10. Nevada shall pay the required amount to Ingram by mailing a check to the following address:

1 Arthur F. Ingram, III
2 4370 Spring Drive
3 Carson City, Nevada 89701

4 Within twenty (20) days of making the payment to Ingram, Nevada shall provide the United
5 States with documentation of having paid Ingram the monetary award due him pursuant to
6 paragraph 9, *supra*, by sending, via overnight delivery service, a photocopy of the check
7 evidencing payment to the following address:

8 John Buchko
9 United States Department of Justice
601 D Street, NW, Room 4912
Washington, DC 20579

10 11. Within fifteen (15) business days from the date of approval of any payment or
11 funding made pursuant to this Agreement by the State of Nevada Board of Examiners,
12 anticipated to be at a July 10, 2012 meeting, Nevada shall fully fund Ingram's Public
13 Employees' Retirement System ("PERS") account pursuant to the provisions of USERRA and
14 Nevada Revised Statute 286.435 to achieve nine (9) years of state service credit at the maximum
15 Chief Deputy Controller rate of pay as set forth in the Nevada Statutes in effect for the years
16 between 2003 and 2012. Such total funding shall not exceed two hundred fifty thousand two-
17 hundred and sixty-nine dollars and seventy-seven cents (\$250,269.77). As a result of such
18 funding, Ingram shall fully vest with PERS. Nevada agrees not to seek any contribution from
19 Ingram for any portion of the PERS contribution.

20 12. Nevada shall withdraw and remove the December 15, 2008, letter of termination
21 from Ingram's personnel file, with the understanding that Ingram's employment with Nevada has
22 ceased and, pursuant to this Agreement, he has no current or future claim to employment with
23 Nevada.

24 **DISPUTE RESOLUTION AND COMPLIANCE**

25 13. The entry of this Agreement constitutes the entry of final judgment within the
26 meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that
27 could have been asserted by the United States in this action. The Court, however, shall retain
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1 jurisdiction over this matter and shall have all equitable powers, including injunctive relief, to
2 enforce this Agreement.

3 Upon motion of either party, the Court may schedule a hearing for the purpose of
4 reviewing compliance with this Agreement. The parties shall engage in good faith efforts to
5 resolve any dispute concerning compliance prior to seeking review by the Court. The parties
6 shall be required to give notice to each other ten (10) days before moving for review by the
7 Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure
8 for the purpose of determining compliance with this Agreement or defending against a claim of
9 non-compliance.

10 **EXPIRATION OF THIS AGREEMENT**

11 14. This Agreement shall expire, and this action shall be dismissed with prejudice,
12 pursuant to the filing of a stipulation by both parties upon perfection by Nevada of paragraphs 9,
13 10, 11 and 12 of this Agreement.

14 **MISCELLANEOUS**

15 15. Pursuant to Nevada Revised Statutes, and pursuant to the date of loss of this
16 action, any payment or funding made pursuant to this Agreement must be approved by the State
17 of Nevada Board of Examiners, which consists of the Nevada Governor, the Nevada Secretary of
18 State and the Nevada Attorney General. It is anticipated that this settlement and resulting
19 payment or funding will be on the July 10, 2012, agenda.

20 16. All parties shall bear their own costs and expenses of litigation, including
21 attorneys' fees.

22 17. If any provision of this Agreement is found to be unlawful, only the specific
23 provision in question shall be affected, and the other provisions will remain in full force and
24 effect.

25 18. The terms of this Agreement are and shall be binding upon the present and future
26 directors, employees, agents, administrators, successors, representatives, and assigns of
27 defendants and upon heirs, successors, and assigns of Nevada.
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1 19. This Agreement constitutes the entire agreement and commitments of the parties.
2 Any modifications to this Agreement must be mutually agreed upon and memorialized in a
3 writing signed by the United States and Nevada.

4 **EFFECTIVE DATE**

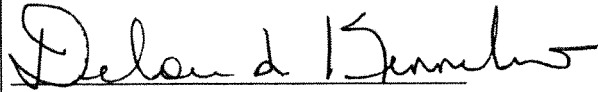
5 20. The effective date of this Agreement shall be the date upon which it is entered by
6 the Court.

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9 APPROVED and ORDERED this 7th day of May, 2012.

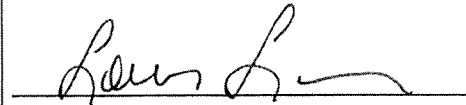
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14 _____
15 LARRY R. HICKS
16 UNITED STATES DISTRICT JUDGE
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1 Agreed and Consented to on behalf of Plaintiff
United States of America:

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4 DELORA L. KENNEBREW
Chief

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7 LOUIS LOPEZ
Deputy Chief

8 
9

10 JOHN P. BUCHKO
JEFFREY G. MORRISON
11 Trial Attorneys
U.S. Department of Justice
12 Civil Rights Division
Employment Litigation Section
13 950 Pennsylvania Avenue, NW, PHB 4500
14 Washington, DC 20530
Telephone: (202) 305-1528
15 Facsimile: (202) 514-1005
Email: John.Buchko@usdoj.gov
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2 Agreed and Consented to on Behalf of Defendants
3 State of Nevada and Office of the State Controller

4 CATHERINE CORTEZ MASTO
5 Nevada Attorney General

6 

7 STEPHEN D. QUINN
8 Chief Deputy Attorney General
9 Nevada Bar No. 5746

10 JOSEPH C. REYNOLDS
11 Deputy Attorney General
12 Nevada Bar No. 8630
13 Bureau of Litigation
14 Public Safety Division
15 100 N. Carson Street
16 Carson City, Nevada 89701
17 Tel: (775) 684-1222
18 Fax: (775) 684-1275

19
20 KIM R. WALLIN, CMA, CFM, CPA
21 Nevada State Controller

22 

23 KIM R. WALLIN, CMA, CFM, CPA
24 Nevada State Controller
25 101 N. Carson Street, Suite 5
26 Carson City, Nevada 89701
27
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APPENDIX A

RELEASE

I, Arthur F. Ingram, III, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Settlement Agreement entered in *United States v. State of Nevada and the Office of the State Controller*, 3:09-cv-00314-LRH-WGC, release and discharge the State of Nevada and its current, former and future officials, employees and agents from all legal and equitable claims of every nature whatsoever either known or unknown arising out of the complaint filed in that case occurring prior to the date of this Release.


I understand that the relief to be given to me does not constitute an admission by Nevada of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between Nevada and myself, without exception or exclusion, and I hereby authorize Nevada to change my PERS designations to employer paid where necessary to effectuate the purposes of this Agreement.

I acknowledge that a copy of the Settlement Agreement in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF
AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 4 day of May 2012.


Arthur F. Ingram, III
Social Security Number: